

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:23-CV-00114**

**JOHN DOE,**

**Plaintiff,**

**v.**

**WAKE FOREST UNIVERSITY,**

**Defendant.**

**ORDER**

**THIS MATTER** is before the Court on non-party John E. Fitzgerald’s Motion to Quash Subpoena. (Doc. No. 46). On May 25, 2023, the Court entered a brief stay of Mr. Fitzgerald’s obligation to respond to the subpoena to allow the Court to fully review Mr. Fitzgerald’s motion and a response from Wake Forest University, as well as provide an additional opportunity for the parties to confer to resolve this dispute. (Doc. No. 48). According to Wake Forest’s response, (Doc. No. 49), counsel for Mr. Fitzgerald and the school have since conferred multiple times, presumably without reaching any resolution (as none has been relayed to the Court). Therefore, this dispute is now ripe for decision.

As discussed in its earlier Order, the Court’s primary concern with the challenged subpoena is that it appeared to directly request production of attorney client communications from Mr. Fitzgerald, who served as Plaintiff Doe’s counsel in the Title IX investigation and hearing that is the subject of Doe’s claims.<sup>1</sup> However, Wake Forest represents in its response that it seeks only

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<sup>1</sup> The Court notes that Mr. Fitzgerald has not timely filed any objection to the subpoena under Rule 45. *See* Fed. R. Civ. P. 45(d)(2)(B).

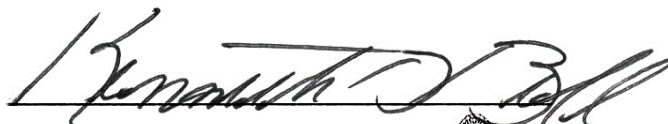
non-privileged communications in its subpoena. Further, Wake Forest's response states that Mr. Fitzgerald has "between 500 and 600 pages" of responsive "non-privileged" emails, including numerous emails with John Doe that include asserted "third parties."<sup>2</sup> The Court finds that the production of that volume of non-privileged communications is not unduly burdensome. Therefore, the Court will deny the Motion to Quash as to responsive non-privileged documents and direct that such materials be produced on the schedule ordered below.

**NOW THEREFORE IT IS ORDERED THAT:**

1. John E. Fitzgerald's Motion to Quash Subpoena, (Doc. No. 46), **DENIED**; and
2. Mr. Fitzgerald is ordered to produce non-privileged documents responsive to the subpoena as he is reasonably able to do so, but, in any event, on or before June 15, 2023.

**SO ORDERED ADJUDGED AND DECREED.**

Signed: May 31, 2023



Kenneth D. Bell  
United States District Judge



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<sup>2</sup> The Court makes no ruling as to the privileged nature of any email involving Mr. Fitzgerald in this Order.